

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 112

March 23, 1995, 12:19 p.m.
Page S-4428 Temp. Record

LINE-ITEM VETO/Substitute

SUBJECT: Legislative Line Item Veto Act of 1995 . . . S. 4. McCain motion to table the Daschle substitute amendment No. 348 to the Dole substitute amendment No. 347.

ACTION: MOTION TO TABLE AGREED TO, 62-38

SYNOPSIS: Pertinent votes on this legislation include Nos. 109-111 and 113-115.

As reported, S. 4, the Legislative Line Item Veto Act of 1995, will grant the President enhanced power to rescind spending in appropriations bills, and direct (generally entitlement) spending bills. Rescissions would remain in effect unless Congress passed a disapproval resolution and, if necessary, overrode a presidential veto by the usual two-thirds margin in both Houses. Savings from rescissions would be applied to the deficit.

The Dole substitute amendment would replace the provisions of S. 4 with provisions that would mandate the separate enrollment as bills of line items in all spending bills, all bills containing new or expanded direct spending programs, and all bills containing targeted tax benefits.

The Daschle substitute amendment to the Dole amendment would enact the provisions of S. 14 as reported. It would provide that rescission proposals of the President would have to be considered by Congress on an expedited basis. For each Act containing budget items, the President could propose the rescission of individual items, which would be lumped together in one recession proposal bill. Under expedited procedures, each House would have 10 days to either accept or reject a recession proposal bill. In the Senate: motions to strike individual proposed recessions would be in order if supported by at least 12 Members; debate would be limited to 10 hours; the motion to proceed would be nondebatable; debate on appeals would be limited to 1 hour; motions to recommit would not be in order; and motions to further limit debate would not be debatable. Debate on resolving differences between the two Houses would also be limited. If a conference took more than 10 days, any Member could reintroduce the original rescission proposal under limited debate procedures, and without that proposal being open to amendment. Upon making a recession request, the President could temporarily suspend budget authority for 45 days for any item that he has proposed to be rescinded. Budget items would be defined: as any budget authority provided in an appropriations act except to fund direct spending or the administrative

(See other side)

YEAS (62)			NAYS (38)			NOT VOTING (0)	
Republicans (53 or 98%)		Democrats (9 or 20%)	Republicans (1 or 2%)		Democrats (37 or 80%)	Republicans (0)	Democrats (0)
Abraham	Helms	Bradley	Jeffords	Akaka	Inouye		
Ashcroft	Hutchison	Feinstein		Baucus	Johnston		
Bennett	Inhofe	Graham		Biden	Kerrey		
Bond	Kassebaum	Heflin		Bingaman	Kohl		
Brown	Kempthorne	Hollings		Boxer	Lautenberg		
Burns	Kyl	Kennedy		Breaux	Leahy		
Campbell	Lott	Kerry		Bryan	Levin		
Chafee	Lugar	Lieberman		Bumpers	Mikulski		
Coats	Mack	Robb		Byrd	Moseley-Braun		
Cochran	McCain			Conrad	Moynihan		
Cohen	McConnell			Daschle	Murray		
Coverdell	Murkowski			Dodd	Nunn		
Craig	Nickles			Dorgan	Pell		
D'Amato	Packwood			Exon	Pryor		
DeWine	Pressler			Feingold	Reid		
Dole	Roth			Ford	Rockefeller		
Domenici	Santorum			Glenn	Sarbanes		
Faircloth	Shelby			Harkin	Simon		
Frist	Simpson				Wellstone		
Gorton	Smith						
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

expenses of Social Security; or as a targeted tax benefit. Rescissions of budget authority would be matched by commensurate reductions in the discretionary spending caps of the Budget Act; recessions of targeted tax benefits would be matched by adjusting the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act (these two provisions would ensure that the savings from rescissions would be used to reduce the deficit).

Debate was limited by unanimous consent. Following debate, Senator McCain moved to table the Daschle amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The time for the Daschle amendment is past. It is praiseworthy when viewed in isolation, but it is thin gruel when compared to the underlying Dole amendment. The enhanced rescission provisions of the Daschle amendment would require a simple majority vote in one House to get away with wasteful, porkbarrel spending or special interest tax breaks; the separate enrollment provisions of the Dole amendment would require two-thirds majority votes in both Houses. Enhanced rescission authority, while laudable, is not true veto authority. A veto requires a two-thirds vote in both Houses. If the arguments against the Dole amendment had merit, there would be reason to consider the Daschle amendment, but none of those arguments stands up under examination. Therefore, there is no rational reason for any Senator who really supports enacting a line-item veto to vote for the weak Daschle amendment in lieu of the Dole amendment, which would enact a true line-item veto.

In the past 10 years six separate efforts related to this issue have been voted on in the Senate. In most of those votes the number of Democrats voting in favor could be counted on one hand. Though Republican support was strong, there were not enough Republicans to carry the day. Not even enhanced rescission bills could garner Democratic support--in 1990, 1992, and 1993 Republican rescission proposals received four, seven, and five Democratic votes respectively. In 1993, Senator Bradley converted to the cause and advanced an enhanced rescission proposal that covered both appropriations and tax expenditures. Even though the amendment was sponsored by a Democrat, only 13 Democrats were willing to vote for it. Now that Republicans control both Houses, though, many of the same Democrats who fought the line-item veto in years past have suddenly come to appreciate the wisdom of increasing the President's authority to reject porkbarrel spending that has been slipped into bills by Congress. We are delighted by this conversion, even if it has only come in the face of certain defeat for their former viewpoint.

At the same time, this amendment makes their conversion look like they have only gone from atheism to luke-warm agnosticism. They have latched on to the weakest mechanism possible for forcing Congress to review wasteful spending, and have inappropriately termed it a line-item veto. However, no matter what they may call it, the authority that would be given to the President by the Minority Leader's amendment is not veto authority. Congress could still pass enormous omnibus bills by simple majority votes that contained both critical spending and porkbarrel spending, secure in the knowledge that the President would not veto the bills because of the critical spending. The President would then have the right to make Congress vote on the wasteful spending in a bill, but the same simple majority would be able to deny those rescissions. In other words, the President would not veto anything. He would not rescind line items with vetoes which would take effect unless two-thirds majority votes in both Houses were mustered to override those vetoes; all he would do is make Congress vote on his proposed rescissions, which could be rejected by a simple majority vote in either House. The President can already propose rescissions; the sole difference advanced by the Daschle amendment is that Congress would no longer be free to ignore those proposals. Congress would have to vote.

Some Senators have made much of the fact that the Daschle amendment contains the text of S. 14, which was sponsored by Senator Domenici, and that many Republicans have supported similar proposals in the past. However, in making these observations they have left several important points out. First, Senator Domenici sponsored S. 14 largely to serve as a counterweight to the original language of S. 4, which did not include coverage of tax expenditures. The Dole substitute, though, covers appropriations, tax expenditures, and new entitlements, and in the opinion of Senator Domenici offers a much stronger approach to the line-item veto than does the bill he sponsored. Also, past Republican support for enhanced rescissions proposals has mainly been because Republicans understood that they had a better chance of passing those proposals than they did of passing stronger approaches like separate enrollment. With Republican majorities in both Houses of Congress supporting strong line-item veto legislation, and with large numbers of Democrats now joining in the chorus, we do not see any reason for settling for the good when we have the chance of enacting the great with strong bipartisan support.

In addition to their opposition to giving the President a true, two-thirds-override, line-item veto, our colleagues have stated three other reasons why they favor the Daschle amendment over the Dole amendment. First, they have suggested that the separate enrollment process would be too cumbersome. Perhaps at one time it might have been time-consuming to enroll line items separately, but we know that in this computer age it would take only a matter of hours. To confirm our estimation, we had the enrollment clerk disaggregate one of the larger appropriations bill from last year, and, in this trial run, the process was completed in less than 4 hours. Some Senators have complained that it would be inconvenient for the President to have to affix his signature to the thousands of resulting bills, but the benefit of being able to veto billions of dollars in wasteful spending would surely outweigh the cost of any writer's cramp he may get. We doubt any President, or most Americans, would agree that it is better to keep porkbarrel items hidden deep in committee reports, safely away from a veto pen, than it is to make the President sign-off on each spending line-item.

MARCH 23, 1995

VOTE NO. 112

The next objection that our colleagues have raised is that they believe the Dole amendment may be unconstitutional. However, most constitutional scholars across the political spectrum have concluded that the separate enrollment approach contained in the Dole amendment is constitutional. Most discussions on constitutionality have centered around whether disaggregated line-items can be "deemed" to have been passed by Congress, and the overwhelming consensus has been that they can under Congress' authority to make its own rules. Any ambiguity that exists, though, should soon be removed, because an Abraham amendment will be accepted shortly that will provide for the expedited, en bloc consideration of separately enrolled line items. Thus, nothing will be "deemed" passed.

The final objection that has been raised by our colleagues is that they prefer the definition of tax expenditure that is in the Daschle amendment. We do not. The Daschle amendment would cover almost any tax expenditure--for example, if Congress passed a revenue bill that included a capital gains tax cut or a health insurance deduction, those expenditures would be separately enrolled. In other words, the Daschle amendment would cover virtually any tax cut proposal. The Dole amendment, on the other hand, would only cover special interest tax cuts that are intended to benefit individual taxpayers or groups of taxpayers. Such special interest tax breaks are common, and the President should have the opportunity to veto them. Other tax cuts that apply to broad groups in society, though, should not be subject to greater scrutiny. We do not favor making it more difficult to lower the tax burden on the American people.

Those Senators who favor the Daschle amendment because they want it to be more difficult to cut taxes are entitled to their opinion. Those Senators who think the Dole amendment is unconstitutional are in disagreement with most experts. Those Senators who are more concerned about the inconvenience of the process of separately enrolling bills than they are about the prospect of saving billions of dollars should rethink their positions. Finally, those Senators who agree with us that a veto only has meaning if it requires two-thirds votes to override it will join us in tabling the Daschle amendment.

Those opposing the motion to table contended:

The Daschle amendment would take the enhanced recession approach to the line-item veto. This approach has strong bipartisan support. It is clearly preferable to the Dole separate enrollment approach for four reasons. First, it would not tie the legislative process in knots. Second, it would be clearly constitutional. Third, it would protect majority rule. Fourth, it would unambiguously put tax breaks on the table for presidential review. Most Senators should find these reasons compelling.

At the outset, Senators should be aware that the Daschle amendment, unlike the underlying Dole amendment, is not a proposal that was hastily slapped together over the weekend. Instead, it is the text of S. 14, which passed the Budget Committee earlier this year with broad bipartisan support. This amendment should appropriately be called the Domenici-Exon amendment, because it contains the text of their bill. Republicans in both Houses should be especially enthused with this language, because they have championed it nearly word-for-word in the past several Congresses.

The amendment would provide the President with enhanced recession authority. After passing an appropriations bill or a bill containing new tax expenditures (loopholes), the President would have 20 days to propose the rescission of individual line items in that bill. Within 2 days Congress would have to begin consideration of a bill containing the President's proposed rescissions and then within 10 days either accept or reject that bill.

The first advantage of this process over the process advanced by the underlying amendment is that it is simple. Under the Dole amendment, the 13 regular appropriations bills would be broken down into over 9,000 separate bills, each of which, if they were vetoed, would require separate two-thirds majority votes in each House to be overridden. Under the Daschle amendment, though, still only 13 bills would be passed, and for each of those bills only one rescission bill at most be considered. The Daschle amendment would also avoid the unwieldy enrollment process of the Dole amendment, which would require the enrollment clerk first to figure out how to break bills apart, and then would require the President pro tempore, the Speaker of the House, and the President of the United States to sign the resulting thousands of fragments as separate bills.

The Daschle amendment would also avoid the constitutional questions that would be raised by the proposed enrollment process in the Dole amendment. Apparently, many of our constitutional concerns with this process may soon be relieved by an Abraham amendment, which would provide for the expedited consideration en bloc of separately enrolled line items instead of "deeming" that Congress has passed them. Still, some concerns will remain. For example, what would happen to the bills as passed by both Houses after the thousands of little "billetes" had been excised? Once a bill has passed, it is supposed to be presented to the President for his signature. Would these bills, after their parts have been separately enrolled, have any status at all?

The third advantage to the Daschle amendment is that it would protect majority rule. It would require that a majority of Congress approve cuts that are proposed by the President instead of requiring a two-thirds majority to disapprove them. Our intent in passing a line-item veto should not be to pass legislative power to the White House, but to expose wasteful spending. If the President identifies wasteful spending items that are clearly not in the national interest, simply separating them out and forcing Congress to vote on them will result in their defeat. If a majority of Members favor such items even after they are exposed to scrutiny, though, they should not be defeated. Under the Dole amendment, majority opinion would not be enough to stop a President from eliminating line-items--a two-thirds majority vote in both Houses would be needed. Theoretically, a President could gut defense, eliminate the Education Department, or make other major changes to legislative policy as long as he had the acquiescence of a third of the

membership in one House of Congress. We believe it would be a severe mistake to give the President that much legislative power.

Our final reason for supporting the Daschle amendment over the Dole amendment is that the Daschle amendment would unambiguously cover all tax loopholes. Both amendments would allow the line-item veto of a tax break that would benefit just a single taxpayer or group of taxpayers, but the Dole amendment would add the caveat that it would only apply to the extent that "similarly situated" taxpayers did not receive the same benefit. We fear that this caveat may make the Dole amendment's coverage extremely narrow or nonexistent. For example, if a special tax break were enacted for residents of Fairfax County, it would definitely be covered under the Daschle amendment, but it might not be covered under the Dole amendment because all similarly situated taxpayers could be defined as county residents.

The Daschle amendment, in summary, offers a clearly superior approach to the line-item veto. It would expose unnecessary spending without creating an unwieldy, unconstitutional process that cedes legislative power to the President. Senators should therefore vote against the motion to table.